IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7889 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJUBHAI RANCHHODBHAI SONI THRO.HIS WIFE REKHABEN PAREKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 7889 of 2004

MR NM KAPADIA for Petitioner No. 1

MS HB PUNANI ASST GOVERNMENT PLEADER for Respondent No. 1-3

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 22/12/2004

ORAL JUDGEMENT

#. Heard Mr.N.M.Kapadia, learned advocate appearing for the petitioner and Ms.H.B.Punani, learned AGP for the

other side.

Affidavit-in-reply filed by the Commissioner of Police for Surat City tendered today is taken on record.

#. The present petition is filed under Article 226 read with Articles 21 and 22(5) of the Constitution of India challenging the legality and validity of the order of detention dated 16.6.2004 passed by the Police Commissioner, Surat city under purported exercise of powers vested with the detaining authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short "the Act").

#. The petitioner is branded as "a Bootlegger" within the meaning of Section 2(b) of the Act, as he was found involved in offences registered under the Bombay Prohibition Act. While passing the order of preventive detention under challenge, the detaining authority has mainly considered the fact of registration of an offence by Udhana Police Station under Bombay Prohibition Act and the statements of two witnesses, which were recorded and placed by sponsoring authority on 27th march, 2004. That order under challenge is assailed on various grounds. However, learned advocate Mr.Kapadia has mainly placed reliance on the ground that the ratio of the decision in case of SOHANLAL SURAJARAM VISNOY v. STATE OF GUJARAT, 2004(2) GLR 1051, would squarely help the petitioner because this is a case of solitary incident. It is submitted that the statements recorded by the sponsoring authority does not inspire confidence. However, the second point argued by the learned advocate Mr.Kapadia is also found valid that after registration of the offence on 3rd March, 2004, statements of two witnesses have been recorded on 27th March, 2004 that is after approximately 24 days. There was no need to record such statements after 24 days. If the petitioner was required to be detained, preventing his alleged bootlegging activities prejudicial to maintenance of public order, then appropriate order could have been passed at the earliest. Again, the sponsoring authority took more than reasonable time in taking the witnesses for verification before the detaining authority. It emerges from the record that these statements were verified by the authority on 15th April, 2004. So, further delay in 18 days in getting the statements verified and that has resulted into delay in passing of the order of detention.

#. When statements were verified on 15th April, 2004, then, passing of an order of preventive detention on 16th April, 2004 is an act mechanically done or

performed. Therefore, the ratio of the decision of this Court in case of RANUBHA BHARVAD, 2000 (3) GLR 2696 would help the present petitioner.

#. For short, there requires no further detail discussion on other points raised in the petition and the Court finds that the order of detention is not sustainable in the eye of law.

#. The petition succeeds and the same is allowed. The order of detention dated 16.4.2004 is vitiated and the same is hereby quashed and set aside. The detenu RAJUBHAI RANCHHODBHAI SONI who has been detained at District Jail, Rajkot be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is permitted.

Date :22/12/2004 [C.K.Buch, J.]

#kailash#